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ABSTRACT

The employment of husbands and wives in the same school system is now a widely accepted practice. In a recent American Association of School Personnel Administrators (AASPA) survey of 63 school systems, all districts but one reported having husbands and wives on the payroll. Where most administrators and boards of education draw the line is in allowing one spouse to supervise the work of the other. Boards of education appear to be more strict in their hiring policies in the area of employment of relatives of board members and of supervisory and administrative personnel, particularly the superintendent of schools, and in cases where the employee would be under the supervision of a spouse. Twenty policies dealing with the topic of nepotism and one court decision are included.

(Author/MLF)

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NEPOTISM IN THE PUBLIC SCHOOLS

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EXAMPLES OF POLICIES DEALING WITH THE
EMPLOYMENT AND ASSIGNMENT OF RELATIVES

AMERICAN ASSOCIATION OF SCHOOL PERSONNEL ADMINISTRATORS

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EXAMPLES OF POLICIES DEALING WITH THE EMPLOYMENT
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Price: \$2.00

AMERICAN ASSOCIATION OF SCHOOL PERSONNEL ADMINISTRATORS
6483 Tanglewood Lane - Seven Hills, Ohio 44131

The employment of husbands and wives in the same school system, once a no-no, is now a widely accepted practice. In a recent AASPA survey of sixty-three school systems, all districts but one reported having husbands and wives on the payroll. Combinations included both working in certificated positions, certificated and classified combinations, and both employed in classified jobs. In most cases spouses were either both certificated or both were employed in classified positions.

Consensus of those who responded to the AASPA survey is that the best qualified candidate be employed for the position regardless of whether a husband or wife is currently employed by the district. Typical of the comments received was that of Alden Whitmore of Danville, Virginia, who wrote, "Our primary concern should be to employ the best qualified individual available for a given position. The fact that the spouse is employed in the same school district or even the same school should not be a factor in the selection process." Joseph P. Wilson of Lakewood, Ohio, agrees there should be no restriction placed on the employment of spouses, but offers this word of caution: "Whenever possible, spouses should not be assigned in the same department or school building, so as to avoid the testing of loyalties in a professional situation." However, Wilson does not advocate an immediate reaction to separate professionally those who get married while members of the same department or staff. "Unless their subsequent behavior warrants separation," he says. Size of the department or school might be a factor in whether to assign spouses to the same unit. "It seems to me that a husband and wife can get together and influence a department or school decision unduly, particularly if the unit is a small one," commented another respondent.

Although a number of personnel administrators expressed a reluctance to assign both spouses to the same building, and, in fact, make an effort not to, forty-five of the sixty-three districts responding have couples working in the same school building. In twelve of these instances the couples are members of the same department. Where most administrators and school district boards of education draw the line is in allowing one spouse to supervise the work of the other, although in nine of the forty-five instances where couples were reported working in the same building, this is the case. However, of those districts responding to the survey, eleven have specific board policies that prohibit the supervision of a spouse, and nine additional districts have established administrative rules prohibiting this practice.

The lifting of prohibitions against the employment of spouses was seen as a result of "the more humanistic point-of-view in education at this time" by one respondent. Another personnel administrator pointed out that the district might be vulnerable to charges of discrimination in employment or assignment where such rules are in force. An applicant for employment could raise the question of whether or not having a husband or wife already employed by the district is a BFOQ.

Although most school personnel administrators in the survey held the opinion that to refuse to employ a spouse is an act of discrimination and would therefore discourage such rules, several expressed some concerns over the kinds of problems that are sometimes created by having couples employed in the same district. Jack Lowe of Holland, Michigan, writes, "The scarcity of teaching positions may lead to criticisms by unemployed teachers of practices that permit two or more members of the same family to hold positions in one district." Marguerite Nation of Brooksville, Florida, says reprimanding one member of a couple may lead to two unhappy people on the staff. In the opinion of Lawrence Kennedy of Grosse Pointe, Michigan, family

problems often become building problems when spouses are assigned together. Another administrator said he knew of cases where one of the spouses had a legitimate grievance but hesitated to file because of the fear that it might endanger the chances for advancement of the other.

Where boards of education appear to be more strict in their hiring policies is in the area of employment of relatives of board members and of supervisory and administrative personnel, particularly the superintendent of schools, and in cases where the employee would be under the supervision of a spouse. Typical of these is the policy adopted by the Phoenix Union High School System Board of Education:

Policy 2.26 P - Hiring of Relatives

No spouse, child, sibling, or any relative by blood or marriage in the first degree of any member of the Board of Education, of the Superintendent, or of any member of the administrative-supervisory staff of the Phoenix Union High School District shall be employed by the District except with the unanimous approval of the members of the Board of Education eligible to vote.

This shall become effective July 1, 1976, and shall not apply to anyone who is in the employ of the District as of that date.

The policy adopted by the Aluchua County Schools, Gainesville, Florida, addresses itself to the question of supervision of spouses:

Nepotism - Nepotism shall be avoided in the Aluchua County School System. It shall be the responsibility of the office of the Superintendent to establish regulations and procedures which forestall two or more members of a family unit to work in the same school center if one is in a supervisory position or is in a position to recommend employment or otherwise evaluate the work of the other.

A family unit shall be defined as persons who are related by blood or marriage to the degree of, but not including, 1st cousins.

South Carolina law restricts the employment of relatives of boards of trustees as teachers, but leaves some loopholes:

State Code Section 2-1351. No person who is a member of the board of trustees or a member of the immediate family of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district and, when applicable, of the board of education of the county, or unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing. The provisions of this section shall not apply to any teacher who was employed prior to the time he or his family became a board member. For the purpose of this section, the immediate family of a member of the board of trustees shall include only his parents, children, brothers or sisters. Provided, that the provisions of this section shall not apply to school bus drivers.

As a result of this survey the AASPA office has a number of additional sample policies dealing with the topic of nepotism. Copies will be made available to members upon request. Due to the cost of duplicating and mailing, a charge of \$2.00 must be made for this service. All requests must be pre-paid.

● Beaverton School District #48, Beaverton, Oregon

EMPLOYMENT OF FAMILY MEMBERS - 4000-6

No member of the immediate family* of any central office personnel, certificated or classified, shall be employed in the central office or work out of the central office on a full or part-time basis.

No members of the immediate family of any administrator shall be employed in any position in the district which is subject to the supervision or influence of that administrator.

*Immediate family is defined in policy 4151.2.

● Charleston County School District, Charleston, South Carolina

Code of Ethics/Employment of Board Member Relatives - 4116.22

No school board member in Charleston County shall be employed in any capacity in the school system. No relative within the second degree of any board member will be employed in the school system. Constituent board members or relatives of constituent board members may be employed in a different constituent district.

Supervision of Relatives - 4416.23

It shall be the policy of the Charleston County School Board to prohibit the employment of an employee in a position which would require the employee to supervise and evaluate a member of his immediate family or be supervised or evaluated by a member of his immediate family. Immediate family for the purpose of this policy is understood to include father, mother, sister, brother, son, daughter, husband, wife, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law. Provided, however, the provisions of this policy as herein above stated shall not apply to any personal relationship in the school district if such relationship was in effect and in being as of the date this policy was adopted.

● Hillsborough County School System, Tampa, Florida

12.6 Family Transfer

No teacher shall be appointed or reappointed to a school in which his father, mother, brother, sister, husband, wife, son, or daughter is employed. A couple marrying during the school year shall finish that year at the same school. It shall be the duty of the principal and Personnel Office to enforce the policy and to arrange for required transfers.

● Kanawha County Board of Education, Charleston, West Virginia

EMPLOYMENT POLICY RELATIVE TO MEMBERS OF IMMEDIATE FAMILY

The following restriction will apply effective September 1, 1976 to all future placements, whether by hire or transfer:

No person will be placed under the direct supervision of a member of his immediate family.

For the purpose of this policy, the following definitions are set forth:

IMMEDIATE FAMILY means: Husband, wife, parent, son, daughter, brother, sister, or the spouse thereof.

● Minneapolis Public School, Minneapolis, Minnesota

NEPOTISM

Effective March 14, 1973, no individual shall be employed for assignment or reassigned to a department, special program or school where one member of a family has direct or indirect administrative or supervisory responsibility over another member of that family.

For purpose of this policy family relationship (including "step" or half-blood relationship) shall include:

1. Husband, wife
2. Brother, sister, mother, father, son, daughter
3. Brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, daughter-in-law
4. Grandmother, grandfather, grandson, granddaughter

However, transfer or assignment of an administrative or supervisory employee to a department, special program or school shall not be cause for a person of such relationship to be transferred or terminated.

● Tulsa Public Schools, Tulsa, Oklahoma

NEPOTISM

No two members of the same family, husband or wife, or person related by consanguinity or affinity to the extent of son, daughter, brother, sister, father, mother shall be assigned to work in the same school or office. Exceptions to this policy may be made by the Superintendent where it is deemed necessary to fill a vital position. This does not apply to people who are assigned out of the Education Service Center to work in various schools.

● Alachua County Schools, Gainesville, Florida

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4112.5

Series: Personnel

Subject: Nepotism

Nepotism shall be avoided in the Alachua County School System. It shall be the responsibility of the office of the Superintendent to establish regulations and procedures which forestall two or more members of a family unit to work in the same school center if one is in a supervisory position or is in a position to recommend employment or otherwise evaluate the work product of the other.

A family unit shall be defined as persons who are related by blood or marriage to the degree of, but not including, 1st cousins.

● Rowland School District, Rowland Heights, California

STAFF CONFLICT OF INTEREST
(Nepotism)

Members of the immediate family of a member of the Board of Trustees shall not be eligible for employment in the district.

Members of the immediate family of a district level administrative employee shall not be eligible for employment in the district.

Members of the immediate family of other certificated employees may be employed in the district on the recommendation of the superintendent.

Members of the immediate family shall not be assigned to the same department or school.

Immediate family as used in this section is defined as: Mother, mother-in-law, father, father-in-law, spouse, son, daughter, brother, sister, grandfather or grandmother of the employee or any relative living in the immediate household of the employee.

● State of South Carolina

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. Section 21-351 of the 1962 Code is amended to read:

"Section 21-351. No person who is a member of the board of trustees or a member of the immediate family of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district and, when applicable, of the board of education of the county, or unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing. The provisions of this section shall not apply to any teacher who was employed prior to the time he or his family member became a board member. For purposes of this section, the immediate family of a member of the board of trustees shall include only his parents, children, brothers or sisters. Provided, that the provisions of this section shall not apply to school bus drivers."

● Phoenix Union High School District, Phoenix, Arizona

Policy 2.26 P Hiring of Relatives

No spouse, child, sibling, or any relative by blood or marriage in the first degree of any member of the Board of Education, of the Superintendent, or of any member of the administrative-supervisory staff of the Phoenix Union High School District shall be employed by the District except with the unanimous approval of the members of the Board of Education eligible to vote.

This shall become effective July 1, 1976, and shall not apply to anyone who is in the employ of the District as of that date.

● Anne Arundel County Public Schools, Annapolis, Maryland

The Board of Education adopted on November 3, 1971 the following Policy in regard to the assignment of all employees:

"No employee of the Board shall be assigned to a position which is responsible through the direct chain of command to another employee who is a member of his immediate family (parent, spouse, child, or sibling), to an in-law, or to one who lives regularly in his household, except by approval of the Board."

● West Islip Public Schools, West Islip, New York

Employment of Relatives.

The law¹ states: "No person who is related by blood or marriage to any member of a board of education shall be employed as a teacher by such board, except upon the consent of two-thirds of the members thereof...."

In the opinion of legal counsel,² this law does not pertain to the continued employment of a tenured teacher employed prior to the time the Board member took office; nor does it or the General Municipal Law, Section 800, apply to the employment of a relative for a nonprofessional position in the school system.

REFS.: ¹Ed. L. Sec. 3016 (2); ²opinion provided Board 11/11/71

● Mountain View-Los Altos Union High School District, Mountain View, California

SECTION 4.2

REQUIREMENTS FOR EMPLOYMENT

Sec. 4.2-6

Employment of Relatives

It shall be the policy of the Mountain View-Los Altos Union High School District that where two members of a family are in the employ of the school district, neither shall have a supervisory or administrative relationship with the other.

Exceptions to this policy shall be made to permit employment of children of employees if the children are full-time students during the regular school year.

Relatives of Board Members cannot serve as employees of the district.

● The Public Schools, Branford, Connecticut

NEPOTISM

1. Two members of the same family--husband and wife, parent and child, or brothers and sisters in the same family--shall not be employed in the same school or in the same office except upon two-thirds vote of the whole Board.
2. The Board shall not employ a member of the immediate family of any Board member specifically, parent, wife, husband, son, or daughter, except on a two-thirds vote, the relative not voting.

- Coachella Valley Unified School District, Thermal, California

In the employment and assignment of personnel, close relatives may not be employed in the same school or under the same administrative unit head.

One relative shall have no responsibility of a supervisory nature over the other.

For the purpose of this policy, close relatives shall be defined as including the mother, father, grandmother, grandfather or grandchild of the employee or of the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother or sister of the employee, or any relative living in the immediate household of the employee.

The provisions of this policy may be waived by the Superintendent when the assignment or placement of both relatives is of such a nature that no reasonable alternatives are available.

- Topeka Unified School District, Topeka, Kansas

EMPLOYMENT OF RELATIVES

The spouse of a member of the Topeka Board of Education or of a staff member at the assistant superintendent level and above will not be employed in the Unified School District No. 501. In the event that marriage, election, promotion, etc., results in a conflict of this policy, the two individuals involved shall be given the option of which will continue with Unified School District No. 501.

- Garden City, Kansas

NEPOTISM - FAVORITISM IN EMPLOYMENT OF RELATIVES

While it is not unlawful according to state law, as a general rule, no member of the immediate or closely related family of Board members, administrators or supervisors shall be contracted as full-time employees of the school district.

A definition for closely related members of a family shall be that used elsewhere in these policies (See GBRIA).

Exceptions to this policy may be granted by the Board of Education when it is deemed to be in the best interest of the school district.

Persons presently employed by the district shall in no way be affected by the adoption of this policy.

- Garden City, Kansas

ASSIGNMENT OF CLOSE RELATIVES

Two or more members of a family may be employed by the school district provided that no more than one member of a family shall be assigned to the same principal or immediate supervisor.

Exceptions to this policy may be granted by the Board of Education when it is deemed to be in the best interest of the school district.

The assignment of close relatives, although such may be in conflict with this policy at the time of its adoption, may be continued if deemed in the best interest of the school district.

- Emporia Unified School District No. 253, Emporia, Kansas

GAGA Nepotism

The district will not employ a spouse of a member of the board of education nor a relative that resides with a member of the board of education.

The district will also refrain from employing any relative of the superintendent of schools.

This provision shall not apply to any person who has been regularly employed by the school board prior to the adoption of this policy.

GAGA-R Nepotism

The superintendent of schools shall make every reasonable effort to determine whether candidates for employment in the school district are related to current employees. If a candidate for employment is related to an employee of the school district, the superintendent will make this fact known to the board of education before any recommendation is made to fill a vacancy.

ANTI-NEPOTISM RULE

Keckeisen v. Independent School District 612, 509 F.2d 1062 (8th Cir., 1975).

Question: Is a school board rule that prohibits a husband and wife from working in the same school constitutional?

Facts: The plaintiff, a high school principal, married a physical education teacher in the same school. Both were tenured teachers who had served in their positions three and six years, respectively. The board had adopted the rule approximately six months before and the board members were aware that the two intended to marry. However, the evidence indicated a long history of board opposition to husbands and wives working in the same school. After the marriage, the board notified the couple that they were in violation of the policy and conducted a hearing to determine whether one or both of them should be dismissed. As a result of this hearing, the board decided not to renew the principal's contract at the end of the year. He brought action against the district charging violation of his Ninth Amendment right to privacy and his Fourteenth Amendment right to equal protection of the laws.

Decision: The Eighth Circuit Court affirmed the district court's dismissal of the principal's request that the district be restrained from not renewing his contract.

Commentary: The court first established that the lower court had jurisdiction to hear the case. Because of the constitutional question involved, the court held the judicial consideration was appropriate at that time and that there was no need for the principal to exhaust administrative remedies.

The principal based his suit in part on Ninth Amendment violations. The Ninth Amendment reads: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This provision, he argued, protected his right to privacy and marriage. In the court's view, the board's rule did not prohibit marriage and the board's action in not renewing the contract violated no substantive constitutional right protected by the Ninth Amendment.

Since no "suspect" classification was involved, the court looked for a "rational basis" for the rules. This basis was found in its stated purpose, that is, to prevent conflict of interest and favoritism and protect the morale of other teachers. In holding that there were no equal protection violations, the court said: "The law should not block legitimate measures to anticipate problems and prevent them."

This decision illustrates that anti-nepotism rules per se are not unconstitutional. However, they must be reasonable and supported by some rational basis. Also, to meet judicial tests, such rules must be fairly and uniformly enforced.

Floyd G. Delon, Administrators and the Courts: Update 1977
(Arlington, Virginia : Educational Research Service, 1977),
pp. 9-10.

Individual Rights Protection Act
Alberta, Canada

Alberta's Individual Rights Protection Act prohibits any employer from discriminating against any person because of marital status or because of the other human rights reasons--race, religion, sex, age, ancestry, or place of origin. The Alberta School Trustees Association advised its constituent school boards to "review and revise if necessary their policies with respect to nepotism" in view of the Province's human rights legislation. By way of guidelines to school board policy writers, the Association also distributed this advisory from a Government of Alberta Memorandum:

A policy which regulates employment on the grounds of a prohibition against favouritism or conflict of interest is not contrary to the (Individual Rights Protection Act), although husband and wife may be involved, provided the prohibition is based on nepotism and not upon marital status per se. The Government has decided to adopt such a policy. Accordingly ...relatives may be hired, and husbands and wives or other relatives may be permitted to work in the same Branch, Institution, or Department provided there is no opportunity to exercise favouritism or there is no conflict of interest present for the persons involved. This policy will prohibit a wife or husband to be in direct supervision of their spouse and similarly an employee to be in direct supervision of a relative.

Direct supervision for purposes of this guideline is considered to be supervision that involves assignment of duties, completion of rating forms, or related responsibilities. On the question of recruitment a panel selection member who is a relative of an applicant should disqualify himself from working on that particular competition....

When an employee marries another employee and a conflict of interest or favouritism situation is obvious, an alternative place of work within the department should be sought for one of the employees. In such cases the wishes of the employees should be taken into account as to who shall be placed in other employment, but normally, the employee occupying the supervisory position will remain in his or her position. When alternative employment cannot be offered, one of the employees will be required to resign, and here again, this should normally be the employee who is not in a position to apply favouritism or who is not exercising supervision over the spouse or other relative.